WISHA REGIONAL DIRECTIVE DRAFT

WISHA Services
Department of Labor and Industries

10.06 ERGONOMICS ENFORCEMENT & INSPECTIONS

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I. Background

The Department of Labor and Industries (L&I) adopted the Ergonomics Rule, WAC 296-62-051, on May 26, 2000, to reduce hazards that can cause work-related musculoskeletal disorders (WMSDs). Based on a series of effective dates (found in WAC 296-62-05160), the rule ultimately will apply to all employers with "caution zone jobs," as described by WAC 296-62-05105.

The rule also promises that L&I will develop inspection policies and procedures in consultation with employers and employees affected by the rule. This directive is the result of those efforts.

II. Scope

This policy provides guidance to WISHA enforcement staff conducting inspections under the WISHA ergonomics rule. It will remain in effect indefinitely.

III. Guidance on Application of the Ergonomics Rule

A. Phase-In Periods for Employer Compliance

WAC 296-62-05160 provides a compliance schedule based on Standard Industrial Classification (SIC) codes and an employer's average annual employment. Larger employers in the more hazardous industries (the SIC codes listed in the rule), as well as L&I itself, must comply with certain requirements by July 1, 2002 and with the entire rule by July 1, 2003. Small employers in the same industries must comply a year later, as do the largest employers in all other industries. The remaining employers have either one or two additional years (depending upon size), bringing all employers into full compliance by July 1, 2006.

1. *How can questions about the appropriate SIC code be resolved?*

   The rule includes a list of the affected SIC codes. For the purposes of the rule, the SIC code maintained by the Employment Security Department is considered authoritative if there is any uncertainty or confusion. If the employer's business is described by more than one SIC code, the primary SIC code (based on hours of employment) must be used.

2. *What if the employer's primary SIC code changes?*

   The SIC code in effect at the time of an inspection or consultation will determine the degree to which the employer must comply with the rule at that time.

3. *How will L&I determine the number of FTEs?*

   For the purposes of the rule, L&I will determine the number of full-time equivalents (FTEs) for businesses in operation when the rule was adopted (May 26, 2000) by dividing the lowest number of hours reported to industrial insurance for hours worked in Washington in any calendar year following adoption of the rule (including calendar year 2000) by the number 2000.

   Self-insured employers are presumed to have at least 50 annual FTEs unless they are able to demonstrate otherwise.

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4. *When must new employers comply?*

   For employers not in operation when the rule was adopted, the number of FTEs will be based on the lowest number of hours reported to industrial insurance in any complete calendar year following the creation of the business. Such employers can rely upon either the "initial implementation schedule" or the "supplemental implementation schedule" in WAC 296-62-05160, whichever provides them the most time to comply.

5. *Which phase-in dates apply to employers with multiple sites when one or more of those sites has fewer than 50 FTEs?*

   In evaluating whether an employer is subject to a particular compliance date, the FTE count is based on the total within Washington. For example, an employer with 3 nursing homes located anywhere in the state, each with 30 FTEs, employs a total of 90 FTEs and is therefore subject to the first set of compliance dates.

   FTEs working outside Washington do not count toward this FTE calculation.

B. "Caution Zone Jobs" and Determining if an Employer is Covered

Whether the rule and its requirements apply to an employer depends upon whether there are "caution zone jobs" present. If there are none, the employer has no obligations under this rule. "Caution zone jobs" are those where an employee's typical work activities include any of 14 *specific* risk factors described by WAC 296-62-05105, which fall under six general categories:

- Awkward postures;
- High hand force;
- Highly repetitive motion;
- Repeated impact;
- Heavy, frequent or awkward lifting; and
- Moderate to high hand-arm vibration.

1. *Can employers be cited for failing to determine if there are "caution zone jobs"?*

   No. The rule does not require employers to conduct a review of their jobs to determine whether those jobs fall in the caution zone. However, an employer who does not review any jobs will not know whether those jobs fall in the caution zone and may fail to comply with requirements that do apply to his or her workplace. For example, if there is a "caution zone job" and the employer has failed to ensure that employees on this job have received ergonomics awareness education, the employer would be in violation of WAC 296-62-05120. But the failure to identify jobs within the caution zone is not itself a violation.

2. *Must employers document a determination if they have "caution zone jobs"?*

   No. The rule does not require any documentation. Employers may choose to keep such records, but they are not required.

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3. *If the inspector believes a caution zone job is present and the employer disagrees, what criteria will be used to determine whether the employer's judgment is reasonable? Must the employer produce any written records or documentation?*

   No written records or documentation for the caution zone determination are required, but the employer may choose to keep and produce records. The criteria used to determine whether the employer's determination is reasonable are discussed in this WRD at IV.B.2.d.

   In relation to some activities, the evaluation can be very brief and still be reasonable. For example, the absence of any power tools in the workplace would easily and properly eliminate risk factors 13 and 14.

4. *If an employer has implemented controls that keep a particular job's exposure to WMSD risk factors below caution zone criteria, but the job would be in the caution zone without the controls, is the job a "caution zone job"?*

   No. If the controls are in place, the controls effectively keep the job below the caution zone levels, and the controls are being used, then the job is not covered by the rule and there are no additional requirements.

5. *Is the presence of a work-related musculoskeletal disorder (WMSD) an appropriate guide to identifying caution zone (or hazardous) jobs?*

   No. WMSDs can occur in other jobs. If the job is not a "caution zone job" as described by the rule, the job is not covered even if an employee on that job develops a WMSD. In the same way, if a job meets the caution zone criteria, it is covered by the rule even if no employee develops a WMSD.

6. *If an employer determines a job is not a "caution zone job" using tools and results developed in an L&I demonstration project, will this be a reasonable determination even if the job otherwise appears to be a "caution zone job"?*

   Yes. The agency will honor assessment methods and results developed in demonstration projects. An employer's determination will be considered reasonable if

   - The employer has relied upon an assessment method developed in a demonstration project and accepted by L&I; and
   - The employer has applied the assessment method appropriately and does not rely upon it for jobs outside the scope of the assessment tool.

   For example, if the employer properly used a demonstration project method to evaluate assembly jobs and failed to identify what would otherwise be a "caution zone job" in assembly, the employer's determination would be considered to be a reasonable one. However, if the employer failed to identify "caution zone jobs" in an area not addressed by the demonstration project method, such as shipping, the employer would be covered by the standard and any applicable requirements.

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7. *Must employers reduce employee exposures that fall within the caution zone?*

   No. The rule does not prohibit "caution zone jobs." Employers with "caution zone jobs" must do the following:

   - Ensure that the ergonomics awareness education described in WAC 296-62-05120 and WAC 296-62-05122 has been provided;
   - Determine whether there are WMSD hazards by analyzing the "caution zone jobs" (using either the general or specific performance approach described in WAC 296-62-05130);
   - Meet the relevant "employee involvement" and annual review requirements of WAC 296-62-05140.

   Employers do not need to reduce exposures unless the further analysis of the "caution zone jobs" reveals that there are WMSD hazards present.

8. *Must an employer consider other activities that fall within the risk factor categories (for example, other "awkward postures") but that are not listed as one of the fourteen specific risk factors in determining whether there are "caution zone jobs" in the workplace?*

   No. Only the 14 specific risk factors can be used to identify "caution zone jobs."

9. *If a single job involves several of the 14 specific risk factors that, taken together, total more than two hours of exposure but taken separately, do not fall within the caution zone, is the job a "caution zone job"?*

   No. The 14 specific risk factors must each be considered separately to determine whether a job is a "caution zone job." For example, the review of a task might show that the employee reaches above the shoulder for 90 minutes and squats another 90 minutes while working in a file room. This would not be a "caution zone job" as neither of the risk factors (working with the hands above the head and squatting) exceeds 2 hours per day by itself.

10. *Must the employer have someone other than the employee observe every job to make a "caution zone job" determination on which he or she can rely?*

    No. The employer may rely on any approach that represents a reasonable determination. For example, an employer might choose to have each employee complete a checklist based on the 14 specific risk factors. Or an employer might choose to have a group of employees or a supervisor with knowledge of the jobs evaluate whether they fall within the caution zone.

11. *Can an employer rely upon representative sampling of jobs in making a "caution zone job" determination?*

    Yes. Employers are encouraged to analyze jobs in a broad fashion; it is generally not necessary to analyze each job separately. For example, in evaluating postures, if an employer determines that the tallest and shortest individuals doing the same tasks on an assembly line are not in a caution zone for having a bent back, the employer may legitimately conclude that individuals within that height range are also not exposed and that additional analysis is not necessary.

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12. *The rule states that "typical work activities" are those that are a "regular and foreseeable" part of the job and occur on more than one day per week and more frequently than one week per year. How is this determination made?*

    The following three criteria must be met in order for the exposures to involve "typical work activities":

    - *Regular* activities are ones that are recurring, and not atypical or exceptional. They are activities that take place repeatedly in what can be described as a fixed pattern.
    - *Foreseeable* activities are ones that are predictable in so far as it is likely that the event would occur. A foreseeable event or situation is one that can be known or predicted before it happens.

      For example, a store may assign employees to conduct a week-long inventory yearly. This activity would be regular (recurring and not exceptional, even though not the normal activity of involved employees) and foreseeable. To determine whether it is covered by the rule, frequency of activities involving such risk factors must be considered.
    - *Frequency Test*

      A. Does this happen more than once in a week?

      B. Does this happen more than one week in a year?

      If you answered "yes" to both questions then the job has met the frequency test. If the risk factors are present less than once a week or less than one week in a year, then the activity is not covered by the rule.

13. *How is "lifting" distinguished from sliding an object?*

    A lift occurs any time that a portion of the weight of the object is manually supported against gravity. Therefore, if an object is tilted from beneath while being handled, the employee "lifts" a portion of the weight and that lift must be evaluated. However, if the employee tilts the object by pushing or pulling, no lift has occurred. Similarly, if the employee simply drags or slides the object without supporting any portion of its weight (no tilting), no lift has occurred.

14. *Would weight lifting as part of an exercise or conditioning program during working hours be considered a "caution zone job"?*

    Not if the programs are managed properly. Although on-the-job weight training may exceed caution zone (and even hazard zone) limits, L&I does not discourage well-designed programs specifically established to improve physical conditioning and strength of employees. If weight training or conditioning programs are conducted properly (for example, in accordance with American College of Sports Medicine, National Strength and Conditioning Association, American Council on Exercise, or YMCA guidelines), any technical violation of the rule directly related to such training will be considered *de minimis* and therefore not cited.

    However, any employees responsible for moving or putting away equipment in a fitness center may be in a "caution zone job," and their exposure must be addressed as required by the rule.

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15. If a tool has an unknown vibration level, is the job a "caution zone job"?

Only if the tool is one of those specifically listed in the rule.

If the job involves use of a tool listed in WAC 296-62-05105(13) more than 30 minutes total per day, the job is a "caution zone job" unless the employer determines that the actual vibration level is below 10 meters per second squared (m/s^2). For tools not listed, the job is a "caution zone job" only if the employer is able to obtain information indicating that the actual vibration level is equal to or greater than 10 m/s^2.

If the job involves use of a tool specifically listed in WAC 296-62-05105(14) more than 2 hours total per day, the job is a "caution zone job" unless the employer determines that the actual vibration level is below 2.5 meters per second squared (m/s^2). For tools not listed, the job is a "caution zone job" only if the employer is able to obtain information indicating that the actual vibration level is equal to or greater than 2.5 m/s^2.

If the tool is not listed in WAC 296-62-05105 and the vibration level is not readily available, the employer can presume that the tool is not covered.

16. How do the hand-arm vibration risk factors apply to hand-guided devices such as lawnmowers and self-supporting floor sanders?

These risk factors cover only hand tools (including those specifically listed in the rule). Larger, self-supporting tools such as power lawnmowers, trenching tools, power trowels, and floor sanders and buffers produce vibration but are not considered "hand tools" and therefore are not addressed by the rule. Similarly, hand-arm vibration transmitted through a vehicle steering wheel or machinery controls is not addressed by the rule.

C. Application of "Grandfather" Clause in the Rule

An employer's pre-existing methods can be accepted as an effective alternative method as described by WAC 296-62-05110 if the employer is able to demonstrate that the following elements were in place on May 26, 2001, remain in place, and are effective in reducing hazards:

- A methodical system for determining whether jobs are hazardous;
- A process for employee involvement and education;
- A process for reducing job hazards that covers the same risk areas as the rule;
- A system for periodically re-evaluating existing jobs and for evaluating new jobs.

A program that relies on the occurrence of WMSDs to determine whether jobs are hazardous is not considered an acceptable alternative method of compliance. Similarly, even if WMSDs have not occurred, a program will not be considered effective unless exposures have been reduced below hazard levels or to the degree feasible.

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D. Ergonomics Awareness Education

Employers with employees in "caution zone jobs" must ensure that such employees and their supervisors have received ergonomics awareness education (WAC 296-62-05120 and WAC 296-62-05122).

1. *Must employers document that employees have been provided ergonomics awareness education?*

   No. The rule does not require that ergonomics awareness education records be kept. Employers may choose to keep such records, but they are not required, and employers cannot be cited based on the absence of such records.

2. *How can compliance be demonstrated in the absence of such records?*

   There is no requirement for an employer to demonstrate compliance with the ergonomics awareness education requirement. The burden would be on the department to prove that the employer is in violation before as part of any citation. During inspections, WISHA enforcement staff will assess whether any required awareness education has been provided. While inspectors will frequently make this assessment by relying upon employer and multiple employee interviews, an employer may choose to keep and provide written documentation and WISHA enforcement staff are expected to give them appropriate weight when they are available. When there is disagreement between the employer and employee interviews regarding training, citation protocols will follow those of other safety and health rules requiring training without specific documentation requirements. See the WISHA Compliance Manual for further guidance.

E. Analysis of "Caution Zone Jobs" to Identify WMSD Hazards

If "caution zone jobs" are present, the employer must analyze those jobs to determine whether WMSD hazards are present (WAC 296-62-05130(1), (2), and (3)).

1. *Must employers document analysis of "caution zone jobs" for WMSD hazards?*

   No. The rule requires that the employer "demonstrate" the method used, but this demonstration need not rely upon written documentation or records. It will frequently be sufficient for the employer or the individuals responsible for the analysis to describe to L&I the method chosen (including the hazard identification criteria) and the results of the analysis. However, the employer may choose to keep and provide written documentation, and WISHA enforcement staff are expected to generally consider such records as analysis worksheets or checklists, a manual of policies and procedures, or a videotape record to be sufficient demonstration of compliance when they are available (see also section IV B 4 of this WRD).

2. *What is considered a sufficient effort to analyze "caution zone jobs" for hazards?*

   The employer must correctly follow the instructions for Appendix B of the rule or any alternate method chosen under the General Performance Approach in WAC 296-62-05130. For some risk factors (such as kneeling, squatting or repeated trauma) the same analysis done to determine if the job was in the caution zone may be sufficient to determine if the job is a hazard. In other cases, additional analysis may be necessary.

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One goal of the hazard analysis is to identify the underlying cause(s) of the risk factors so that appropriate controls can be developed. If the causes are not obvious, further analysis may be required to make an accurate determination.

3. *Can the employer rely upon representative sampling of affected jobs?*

   Yes. What will be considered representative will depend on how variable or standardized the job is. For a standardized job such as a counter person at a fast food chain, for example, it would be acceptable to do a job analysis for a few employees that could then be used chain-wide. In such cases, completely random samples may not be truly representative, however. For example, it may be necessary to evaluate the tallest, shortest and average height employees to determine how height differences would affect postures and the lifting analysis. In jobs where employees with the same or similar titles actually perform very different jobs, it may be necessary to evaluate each job – or a representative sample of each group of similar jobs.

   Some jobs vary day by day, as tasks change. In this case a representative sample could be taken of a few days' worth of production data or observations (or both).

4. *If the employer is unable to locate vibration data on a tool used in a "caution zone job," can a hazard determination be made?*

   No. If the employer has exhausted the available means of obtaining vibration data on the tool in question, the employer cannot be found in violation of the hazard analysis and reduction portions of the rule. The employer is not required to have the vibration level measured.

F. Reduction of WMSD Hazards & Feasibility

If the analysis of a "caution zone job" identifies a WMSD hazard, the employer must reduce employee exposure below the hazard level (according to either the general or specific performance criteria) using controls that do not rely primarily on employee behavior (WAC 296-62-05130(4) and (5)). The rule makes no distinction between engineering and administrative controls, provided that they do not rely primarily upon individual employee behavior for their effectiveness.

If it is not feasible to reduce exposure below the hazard level using such higher-level controls, the employer can supplement them with interim controls that rely upon individual work practices or personal protective equipment.

If it is not feasible to reduce exposure below the hazard level using any combination of controls, the employer must reduce the exposure to the degree economically and technologically feasible. Both economic and technical feasibility must be considered when addressing feasibility issues that may be raised by an employer.

The employer must also demonstrate that he or she has satisfactorily reduced such hazards below the hazard level or to the degree technologically and economically feasible (WAC 296-62-05130(7)).

In addition, the rule requires employee participation in selecting measures to reduce WMSD hazards (WAC 296-65-05140(1)).

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1. *When is an employer in a "safe harbor" and therefore in compliance?*

   A safe harbor is a practice accepted by the department that reduces employee exposure below the hazard levels defined in WAC 296-62-05130 or to the degree technologically and economically feasible. Employers cannot be cited for properly following guidance in such documents.

   Although individual safe harbors may represent either best practices or acceptable practices (or even a combination of the two), WISHA enforcement staff do not need to distinguish between them but can simply rely on whether the employer is operating within a safe harbor that has been accepted by the department.

   A *Best Practice* is any practice that reduces employee exposure below hazard levels. Although further reductions to even lower levels may be possible and feasible they are not necessary for a practice to be considered a best practice or to be in compliance.

   An *Acceptable Practice* is a practice that reduces employee exposure to the degree technologically and economically feasible but does not reduce exposure below the hazard levels.

2. *How will L&I assess technological feasibility?*

   A technologically feasible control is one that is available on the market, one that can be conceived and manufactured or created using tools available to the employer, or one capable of being administratively implemented. It is not necessary that a particular control has been provided to the employer. Rather, as a general principle, employers are expected to exercise some level of creativity in identifying controls to hazards.

   In determining whether it is technologically feasible for an employer to reduce a hazard as required by the rule, L&I will consider the following:

   - Whether "common sense" or plainly obvious controls are available;
   - Whether other employers with similar processes have implemented controls; or
   - Whether L&I is able to *specifically* identify one or more controls that can be implemented.

   When making these determinations, comparisons will not be limited to the state of Washington, but instead will consider potential controls for an industry as a whole. If L&I can identify potential controls relying upon one or more of the above approaches, reducing exposure as required will be considered technologically feasible, provided that

   - the controls do not create a new and more significant hazard; and
   - the controls can be applied within the physical layout of the facility or the property or within other employer-specific technological constraints.

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3. How will L&I assess economic feasibility?

As a general principle, economic feasibility considers both the costs of compliance and whether it is possible for the employer to either absorb or pass on the cost. If compliance would threaten the existence of the employer, the viability of the operation in question, or otherwise cause substantial economic damage, immediate compliance will not be feasible. However, the mere creation of a financial burden does not demonstrate that a control is not economically feasible.

In determining whether it is economically feasible for an employer to reduce a hazard as required by the rule, L&I will consider the following:

- Whether controls are plainly available at minimal or no net cost or a cost that does not threaten the viability of the business or operation;
- Whether other employers in the same industry (or with similar processes and comparable products) *and* similar size have implemented controls;
- Whether L&I is able to specifically identify one or more controls that can be implemented at little or no net cost or a cost that does not threaten the viability of the business.

If L&I can identify potential controls relying upon one or more of the above approaches, reducing exposure as required will be presumed economically feasible.

However, employers may choose to provide employer-specific information suggesting that apparently feasible controls cannot be implemented. Although L&I enforcement staff will not seek such information, L&I will consider the following additional factors if presented by the employer (and will obtain additional financial or other expertise if necessary to evaluate the employer's argument):

- Whether it will be necessary to spread capital equipment or facilities costs over time by phasing in technologically feasible controls as part of the natural replacement/remodel cycles (the availability of used or leased equipment may mitigate this factor);
- Whether there is a significant initial investment and particular economic issues (such as limited cash or liquid reserves that can readily be converted to cash, limited cash flow, a highly competitive national or international market, or small profit margins) that make it difficult for the employer to make the initial investment, in spite of the likelihood of longer term benefits (if costs can be passed on, or if competitors must also comply with the rule, "cash-flow" and similar economic issues are less significant);
- Whether recent events (for example, fire, earthquake, water damage, etc.) have placed an exceptional drain on the employer's resources;
- Other financial data or considerations specific to the employer (however, if the employer's inability to afford the cost of controls results from the employer lagging behind the industry in providing safety and health protection for employees, that will not provide a sufficient basis to find economic infeasibility).

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4. *How will feasibility be assessed when legal, contractual and other requirements must be met?*

   Employers are not required by the standard to break any law or regulation. If the only otherwise feasible controls would require the employer to break the law, then there is no feasible control. However, if the obligation is contractual, rather than a matter of regulation or law, the employer would be expected to comply with the rule (although it would be up to the employer to decide whether and when to renegotiate the contract or to comply by some other means).

5. *Are employers prohibited from reducing employee hours to comply with the rule?*

   No. The rule states that if the employer has tried all feasible control options and there are still hazardous exposures, employers are not required to reduce an individual's work hours in order to be in compliance. The rule does not forbid reducing hours and employers may choose to reduce an individual's work hours for any number of reasons. But the rule *never* requires such reductions.

6. *Is job rotation considered an acceptable control?*

   Yes, when it is feasible. Employee rotation is one administrative control option that may be available to employers to reduce hazardous exposures. When considering rotation as the acceptable control, the rule places job rotation that does not rely on employee behavior (a formal rotation program where employees have identified times allowed working at one task or changes in tasks are scheduled as part of the workday) above job rotation that does rely on employee behavior (having employees switch tasks when "they get tired")

7. *If an employer pays workers by the piece and the job falls in the hazard zone, does the employer have to institute rotation to reduce the risk factor below the hazard level if that is the only control, knowing it would cause a decrease in salary for the employee?*

   Yes. If the job has hazards, they must be reduced to the "degree technologically and economically feasible." Rotation is only one control; often, there are alternative controls available. If job rotation is the only technologically and economically feasible means to reduce the hazard, it is required. The employer is not, however, required to reduce an individual's hours of employment.

8. *Would hiring another employee so that a 2-person lift can be performed in order to reduce a lifting hazard be dealt with as a feasibility issue?*

   Yes, economic feasibility would be considered. For example, hiring one additional employee to assist 100 other employees with periodic lifts and to perform other periodic duties would be more likely to be a feasible control than doubling the size of an employer's one-person workforce.

9. *If a worker works four 10-hour days and working a 10-hour day puts the employee in the hazard zone, can the employer change the worker's schedule to five 8-hour days if that takes the employee out of the hazard zone?*

   Yes. Such an approach might be an appropriate administrative control. It might not be the best option available, and the employer would want to make this determination in consultation with the affected employees and after looking at the range of options that may be available to address a particular hazard. The rule requires employee involvement in the selection of hazard reduction methods.

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10. How would feasibility be addressed when the worksite is under control of others?

In assessing such situations, as in other multi-employer worksite situations, L&I would consider as feasible only those actions that the employer could be expected to take based on reasonably anticipated hazards and to the degree he or she controlled the worksite.

For example, a company that manufactures and delivers goods to a retail store might not be able to control hazards related to the slope and location of the ramps or awkward lifts required by the layout of the store. However, the size of product packaging and the amount loaded onto a hand truck at a given time – as well as the nature of the hand truck and whether one was provided at all – would normally be well within that employer's control and represent feasible steps.

Similarly, a shipping or trucking company cannot control the nature of the objects being handled. In such cases, an employer would not be expected to implement controls that depended upon changing the shape or nature of items being shipped. However, any other feasible means of reducing the hazard must be put into place.

G. Employee Involvement and Employer Sharing of Information

The rule requires the employer to provide for and encourage employee participation in several areas (WAC 296-62-05140(1)). The rule also requires the employer to share specific information with safety committees, or at safety meetings if safety committees are not required (WAC 296-62-05140(2)). It requires employee involvement in an annual review of ergonomics activities by the employer (WAC 296-62-05140(3)). The employee involvement requirement does not mean employees will make decisions pertaining to meeting the elements of the rule, only that they be involved and informed. However, employees often have a great deal of practical information when it comes to solving ergonomics issues.

1. Does the annual review requirement mean that the employer must analyze every job every year?

No, the annual review requirement applies only to those jobs covered by the rule (in other words, "caution zone jobs") and these jobs do not require additional analysis if they have not changed. Employers with "caution zone jobs" must work with employees to review their ergonomics activities at least annually to see if those activities are effective. This would include making sure that education and training have been done and that employees understood what was taught, that existing hazards have been corrected, and that any new hazards that may have been introduced are being addressed.

The annual review would also determine whether technological or economic feasibility conditions have changed for hazards that still exist.

2. To what extent must employees be involved in making caution zone assessments?

The rule does not require that employees be involved in determining whether there are any "caution zone jobs" (and therefore whether the rule applies to that employer).

The rule does require that employers provide for and encourage employees to be involved in analyzing "caution zone jobs" that have already been identified to determine if they are hazardous. However, the rule provides considerable flexibility in how this might be accomplished.

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For example, an employer might choose to involve employees by working through the existing safety committee, might select employee representatives, or might form a specific ergonomics committee that includes employees. If the employer is required to have a safety committee (generally employers with eleven or more employees), the employer must involve the safety committee in choosing the method that will be used to involve employees.

H. Related Guidance on Application of the Ergonomics Rule

1. Will an employer be cited for Accident Prevention Program violations for ergonomics hazards?

No. No ergonomics issues will be addressed using the Accident Prevention Program standard.

2. *Can ergonomics issues not covered by the rule be addressed?*

Some ergonomics issues (for example, whole body vibration) fall completely outside WAC 296-62-05105. These issues may be addressed only after thorough department review, only in the most extreme cases, and only by using the stringent "general duty" (or safe place) tests. The "general duty" tests, described in more detail in IV.B.2.C of the WISHA Compliance Manual, require the department to document that the hazard is recognized and that effective, feasible means of abatement are available before any citation can be considered.

3. When will construction employers be subject to Stute *violations related to ergonomics?*

The department will not issue parallel violations to general or upper-tier contractors using the *Stute* analysis until the rule is fully in effect for all construction employers (July 1, 2006). However, general and upper-tier contractors must comply, as described in the rule's implementation schedule, with regard to their own employees.

IV. Ergonomics Enforcement Protocols

A. *When should enforcement staff include ergonomics issues in an inspection?*

L&I does not currently target employers specifically related to ergonomic issues. However, enforcement staff will be expected to complete a basic review of an employer's compliance with the ergonomics rule in all comprehensive inspections (hygiene or safety) once the timeline has passed that requires compliance by the employer in question.

In addition, ergonomics issues will need to be addressed if raised in employee complaints or credible referrals from other sources (for further guidance on handling complaints during the phase-in period, see WRD 10.05).

B. *What should be included in such a review?*

Inspectors doing a comprehensive inspection or other inspection including (but not necessarily focusing on) ergonomics are expected to consider the following:

1. Has the appropriate compliance date passed for the particular employer?

   a. If the compliance date for that employer has not passed, the inspector should bring the date to the employer's attention.

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This can be done at the opening conference, during the walk-around, or at the closing conference – or in a message on the citation and notice.

If a message is used, the inspector should be careful not to send an inaccurate message about future rule compliance. The inspector may consider language such as the following: "Although not addressed by this inspection, the ergonomics rule (WAC 296-62-051) will take effect for the employer's operations on July 1, 2004. At that time, the employer may be required to meet the rule's requirements related to 'caution zone jobs.'"

In such cases, the inspector does not need to take any further action in relation to ergonomics.

b. If the compliance date has passed, the inspector must determine whether the employer has "caution zone jobs" and is therefore covered by the rule (applying the guidance below).

2. Does the employer's operation or the particular portion of the operation being inspected appear to include "caution zone jobs"*?*

   a. If the employer acknowledges that he or she has "caution zone jobs," it is not necessary for the inspector to review this determination (although the inspector may want to determine whether the employer's determination appears to be the result of inaccurate information about the extent of the rule and it's requirements). The inspector may want to consider other jobs in the workplace that the employer does not believe fall within the caution zone.

   b. If the employer does not believe he or she has "caution zone jobs" (or does not know whether he or she does), the inspector should make an independent assessment.

      In determining whether "caution zone jobs" exist in the workplace, the inspector should consider whether any of the 14 specific risk factors listed in WAC 296-62-05105 appear to be present (see the guidance in Section III and Attachments 2-8 of this directive for further guidance on assessing the presence of "caution zone jobs"). If "caution zone jobs" do not appear to be present, he or she must so note in the inspection file (this notation should clearly reflect the extent and limits of the inspector's review).

      If no "caution zone jobs" are identified, then no additional ergonomics inspection activity is necessary.

   c. If "caution zone jobs" appear to be present based on the inspector's initial review and the employer has not made a determination that "caution zone jobs" are not present, the inspector should consider whether there is cause to cite the following as appropriate to the situation:

      - A violation of WAC 296-62-05120(1) for failure to provide ergonomics awareness education;
      - A violation of WAC 296-62-05130 for failure to determine whether "caution zone jobs" have WMSD hazards;
      - A violation of WAC 296-62-05140(2) for failure to provide the required information to safety committees or at safety meetings.

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d. If "caution zone jobs" appear to be present based on the inspector's initial review and the employer disagrees based on what he or she believes to be a reasonable determination, the inspector is expected to ask the employer (and others, as appropriate) to describe the basis for their determination and to pay considerable deference to the employer's determination unless there are clear and compelling reasons to disregard it.

A decision to identify jobs as "caution zone jobs" in spite of the employer's determination that they are not "caution zone jobs" cannot be made simply by substituting the inspector's judgment for that of the employer. If the employer's judgment was not reasonable, the inspector must be able to explain why it was unreasonable (not simply that it was incorrect).

For example, the employer may indicate that the lifting done by a group of warehouse employees is not covered by the rule. If the inspector determines that employees routinely lift items with a declared weight of 70 pounds by themselves, and that they routinely make two to three dozen such lifts daily, the inspector can appropriately conclude that the employer's determination was not reasonable (since lifting items weighing more than 55 pounds more than 10 times per day makes the job a "caution zone job"). However, if the inspector determines that the employees routinely lift boxes weighing 70 pounds and that the average number of lifts each day is slightly above 10, the inspector must accept the employer's reasonable determination.

If the inspector concludes that the employer's determination was a reasonable one, no citation can be issued (and no further inspection activity related to ergonomics is necessary). If the inspector concludes that the employer's determination was not, in fact, a reasonable one, the inspector should apply the citation guidance in 2-c above. However, no citations can be issued based on such a determination without consultation with the Ergonomics Program within WISHA Policy & Technical Services (P&TS).

A more detailed discussion of how to evaluate each of the 14 risk factors is included in Attachments 2-8 of this WRD.

3. <u>For an employer with "caution zone jobs," has the employer ensured that the required awareness education has been provided to employees in those jobs and to their supervisors?</u>

In making this determination, the inspector should consider any records provided by the employer (whether the employer provided the training or relied upon a previous employer or another third party). Such records should be confirmed with employee interviews. If the employer does not keep such records, the inspector cannot presume that the awareness education was not provided but should interview the employees to determine whether the education was provided and to determine whether the required elements were addressed. The absence of records is not itself evidence of a violation.

a. If the inspector is unable to make a determination one way or another, no violation can be issued.

b. If the inspector documents a failure to provide required ergonomics awareness education, a violation of WAC 296-62-05120 should be cited.

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c. If the inspector determines that ergonomics awareness education was provided, but it lacked one or more elements required by WAC 296-62-05122, the inspector should cite a violation of WAC 296-62-05120, with a reference to the applicable language of WAC 296-62-05122, but only if the employer knew or should have known of the deficiency.

   For example, an employer who verified that employees received awareness education from a previous employer has a valid defense if the awareness education was inadequate and the employer had not previously been made aware of the problem (see IV-B.7.c of the WISHA Compliance Manual for more guidance on the "creating, correcting and/or controlling employer" defense against citations).

4. <u>For an employer with "caution zone jobs," has the employer completed the required analysis of those jobs to identify WMSD hazards?</u>

   The inspector should make this determination initially by interviewing the employer (or the employer's designee) to see whether he or she can describe the method of analysis chosen, the conclusions reached, and any additional hazard analysis performed as a result of the analysis. If the employer or designee is able to do so, the inspector should rely on any records provided, other documentary evidence or employee interviews to confirm the activity. Lack of confirmation, however, does not necessarily prove a violation.

   If the employer is not able to provide information regarding the analysis and its results, the inspector should cite a violation of WAC 296-62-05130(1). If the employer cannot identify which employees participated in the analysis, that violation can be cited as described in #5 below.

   If the analysis has taken place and the inspector does not do a more complete evaluation of the hazards, the inspector's report must indicate that no violations were identified, but it should clearly reflect the limited nature of the review.

5. <u>For an employer with "caution zone jobs," has the employer fulfilled the employee involvement requirements of WAC 296-62-05140?</u>

   If a safety committee is required, the inspector should determine whether it was involved in selecting the method of employee involvement in analyzing "caution zone jobs" and selecting hazard reduction measures (WAC 296-62-05140(1)), whether the required information was shared with it (WAC 296-62-05140(2)), and whether its members were included in the required annual review of ergonomics activities (WAC 296-62-05140(3).

   If no safety committee is required, the inspector should determine whether the employer provided a mechanism for effective employee involvement in job analysis and selection of hazard reduction measures (WAC 296-62-05140(1)), whether the required information was shared at safety meetings (WAC 296-62-05140(2)), and whether the required annual review included effective means of employee involvement (WAC 296-62-05140(3)).

   In making this determination, the inspector can consider employer records; however, the absence of such records does not constitute a violation of the ergonomics rule; in such cases, the inspector must rely upon other investigative techniques such as employer and employee interviews.

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C. When should an inspector do a more comprehensive review?

Attachments to this WRD provide a list of problems and clues to check for in determining if "caution zone jobs" are hazardous, in the event that an ergonomics inspection includes such a review.

WISHA enforcement staff may choose to expand their review based on the nature of the workplace and its activities (they may also choose to refer such expanded activity to regional staff specializing in ergonomics enforcement). Inspectors may also find a further review necessary to respond appropriately to allegations contained in a complaint or referral.

D. How should an inspector evaluate an employer's identification of WMSD hazards in the workplace?

To evaluate an employer's identification of WMSD hazards, WISHA enforcement staff should consider the following:

1. Do WMSD hazards exist in the workplace?

   In evaluating the workplace for the presence of WMSD hazards, WISHA inspectors should use the rule's Appendix B (WAC 296-62-05174, "Criteria for analyzing and reducing WMSD hazards for employers who choose the Specific Performance Approach").

   If the employer finds hazards not identified by the inspector, the inspector should accept this determination and assess whether the employer has met the hazard control and training requirements (unless the employer's determination is based on incorrect information about the rule and its requirements).

   If an employer is using anything other than the "Specific Performance Approach" (WAC 296-62-05130) and Appendix B of the rule, then the analysis is more complex and a WISHA P&TS ergonomist must be included in further review. Alternative approaches are acceptable but inspectors will need assistance to determine if the approach is as effective as those in WAC 296-62-05130(1).

   If the employer has not chosen a particular option, WISHA inspectors should rely on the specific performance approach and Appendix B of the rule to determine whether hazards exist (although the employer may choose a different approach when abating any violations that may be identified and cited).

   Additional guidance on Applying Appendix B of the rule (WAC 296-62-05174) can be found in the Attachments to this WRD.

2. Does the General Performance Approach being used by an employer analyze hazards as effectively as the widely use methods identified in the rule?

   If the inspector applies the Specific Performance Approach in WAC 296-62-05130, by using Appendix B (WAC 296-62-05174), and reaches the same conclusions the employer did then the inspector may conclude that the employer has analyzed for hazards in a manner equivalent to that required in the rule. Attachments 2-8 of this WRD have a more complete discussion of alternative assessment methods used for each of the hazard areas covered by the rule. If the inspector believes there are significant hazards the employer has not identified, then the inspector are expected to contact WISHA P&TS ergonomics staff for further assistance with this particular inspection.

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E. How should inspectors evaluate the employer's reduction of any WMSD hazards in the workplace?

If the risk factors present in a job exceed the allowable levels specified by the analysis method chosen by the employer (WAC 296-62-05130), the employer must institute measures to reduce employee exposure to the hazards. In determining whether an employer's efforts have been sufficient, WISHA enforcement staff are expected to consider the following:

1. Has the employer reduced exposures below the hazard level?

   If yes, the inspector must evaluate the hierarchy of controls as described in #2 below.

   If no, the inspector must evaluate feasibility as described in #3 below.

2. Did the employer rely on employee behavior as the basis for controlling the hazard(s)?

   If yes, and higher-level controls are feasible and therefore required, the inspector must cite a violation of WAC 296-62-05130(5). Such determinations are expected to be made in consultation with a WISHA Services ergonomist.

   If yes, and no higher-level controls are feasible, the employer is in compliance and no further ergonomics enforcement activity is necessary.

   If the employer reduced exposures below the hazard level and did not rely on employee behavior, then the employer is in compliance and no further ergonomics enforcement is necessary.

   - Examples of controls that rely primarily on employee behavior include, providing anti-vibration gloves as PPE, training workers on safe lifting techniques, and informing workers that they are allowed to switch jobs with co-workers "when they get tired," or on some other informal basis.
   - Examples of controls that do NOT rely on employee behavior include: substituting low-vibration tools for high-vibration ones, providing mechanical lifting devices that employees are requires to use, and instituting a formal job rotation program with fixed or scheduled times when employees move to other jobs.

3. Did the employer reduce exposures to the extent feasible?

   If yes, and the employer has implemented an "acceptable practice" already approved by L&I, the employer is in a safe harbor and no further analysis of feasibility is required. If the employer has taken any other measures not previously approved by L&I, the inspector must assess feasibility as outlined in III F of this WRD. If this shows that the employer has reduced exposures to the degree feasible, the employer is in compliance and no further ergonomics enforcement activity is necessary.

   If not, the inspector must cite a violation of WAC 296-62-05130(4). Such determinations should be made in consultation with WISHA P&TS ergonomics staff.

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4. Did the employer provide training for employees working on jobs that have been changed for the purpose of reducing hazards?

   If jobs have been changed but no training was provided, the inspector must cite a violation of WAC 296-62-05130(6).

   If training was provided, but the inspector determines based on interviews, review of the training materials, or other methods that the training is clearly inadequate to the situation, the inspector must cite a violation of WAC 296-62-05130(6).

F. How should violations be cited?

1. WAC 296-62-05101 cannot be cited.
2. WAC 296-62-05103 cannot be cited. If an employer incorrectly concludes he or she is not covered by the rule, that determination is not a violation.
3. WAC 296-62-05105 cannot be cited. If an employer incorrectly concludes that he or she does not have "caution zone jobs," that determination is not a violation.
4. WAC 296-62-05110 cannot be cited. If an employer's pre-existing ergonomic activities are not effective, when taken as a whole, the employer's existing activities must be evaluated based on the requirements of the rule and any violations cited as appropriate, based on the guidance below.
5. WAC 296-62-05120 must be cited whenever an employer fails to ensure that employees working in "caution zone jobs" and their supervisors have received ergonomics awareness education. Paragraphs (1) and (2) cannot be cited separately.
6. WAC 296-62-05122 cannot be cited. If the ergonomics awareness education fails to satisfy the specified requirements, a violation of WAC 296-62-05120 must be cited as described in #5 above, with a reference to WAC 296-62-05122.
7. WAC 296-62-05130(1) must be cited when the employer has failed to analyze "caution zone jobs" using either the general or specific performance approaches.

   If the analysis has been completed but is inadequate, a violation of WAC 296-62-05130(1) must be cited. Such violations can be cited only following consultation with the ergonomics staff in WISHA P&TS.
8. WAC 296-62-05130(2) cannot be cited. If the analysis does not use a systematic method or otherwise fails to satisfy the requirements of this paragraph, a violation of WAC 296-62-05130(1) must be cited as described in #7 above, with a reference to WAC 296-62-05130(2).
9. WAC 296-62-05130(3) cannot be cited. If individuals participating in the hazard analysis do not know how to use the method effectively or have not been informed of the rule requirements, a violation of WAC 296-62-05130(1) must be cited as described in #7 above, with a reference to WAC 296-62-05130(3).
10. WAC 296-62-05130(4) should not be cited if the employer has failed to reduce WMSD hazards below the hazard level of to the degree technologically or economically feasible, whichever is greater. Instead, a violation of WAC 296-62-05130(5) must be cited.
11. WAC 296-62-05130(5) must be cited if the employer fails to correct the hazards, following the appropriate hierarchy of controls.

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12. WAC 296-62-05130(6) must be cited if the employer fails to provide job-specific training to employees affected by changes in the job or work practices, or if that training is clearly inadequate.

13. WAC 296-62-05130(7) will normally be cited as part of a group with violations of WAC 296-62-05130(1) or WAC 296-62-05130(5).

    If the employer is not able to demonstrate the method used to analyze "caution zone jobs" for WMSD hazards or the criteria used in such evaluations, or if an employer is not able to identify the jobs with WMSD hazards, a violation of WAC 296-62-05130(7) must be cited and grouped with any cited violations of WAC 296-62-15130(1).

    If the employer is not able to demonstrate the reduction of all WMSD hazards below the hazard level or to the degree technologically or economically feasible, a violation of WAC 296-62-05130(7) must be cited and grouped with any cited violations of WAC 296-62-05130(5).

14. WAC 296-62-05140(1) must be cited if the employer does not provide for and encourage employee participation in the analysis of "caution zone jobs" for WMSD hazards, or if an employer who is required to have a safety committee does not involve it in choosing the methods for employee participation in the analysis.

15. WAC 296-62-05140(2) must be cited if the employer does not share the required information with its safety committee or at safety meetings.

16. WAC 296-62-05140(3) must be cited if the employer does not review ergonomic activities annually or if the employees are not involved in the review as required.

17. WAC 296-62-05150 cannot be cited. However, the definitions may be used to determine whether violations have occurred or whether the standard applies to a given situation.

18. WAC 296-62-05160 cannot be cited. If an employer incorrectly determines that the rule does not yet apply to him or her, that determination is not a violation.

19. WAC 296-62-05172 cannot be cited.

20. WAC 296-62-05174 cannot be cited. Uncontrolled hazards identified using this appendix for employers using the "specific performance method" must be cited according to the guidance in #10 above.

21. WAC 296-62-05176 cannot be cited.

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G. What special review requirements apply to ergonomics citations?

Regional staff must consult with ergonomists in WISHA Administration in the following situations:

- before issuing a citation that disputes an employer's reasonable determination that the jobs in question were not "caution zone jobs;"
- Before issuing penalty citations under WAC 296-62-051;
- before citing an employer using an approach other than the "Specific Performance Approach" for WMSD hazards the employer has not identified;
- before rejecting an employer's claim that it is not feasible to correct a hazard.

Approved: _____
Michael A. Silverstein
Assistant Director for WISHA Services

For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648, Olympia, WA 98504-4648 or by telephone at (360) 902-5503. You also may review policy information on the WISHA Website (http://www.lni.wa.gov/wisha).